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# Appeal Decision

Site visit made on 5 March 2024

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 15 March 2024**

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**Appeal Ref: APP/U5360/C/22/3312005**

**65 and 67 Ashtead Road, Hackney, London E5 9BJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Moses Schwartz of Eveland Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice was issued on 26 October 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the construction of a canopy across the first floor rear terrace.
- The requirements of the notice are:
  1. Remove the canopy structure from the first floor rear terrace (highlighted in Appendix 1<sup>1</sup>);
  2. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
  3. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is: Three months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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## Applications for costs

1. Applications for costs have been made by the Council against Mr Moses Schwartz and by Mr Moses Schwartz against the Council. These applications are the subject of a separate Decision.

## The Notice

2. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice in order.
3. There are some inconsistencies in this enforcement notice (the Notice) in that the site to which it relates is defined in Section 2 as 'the Land', whereas in the requirements at Section 5, unspecified terms such as the property and premises are used. If I were upholding the Notice, then it would have been necessary for me to correct these defects, however, having regard to my conclusions on the ground (a) appeal, such is not necessary in this case.

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<sup>1</sup> Appendix 1 is an appendix to the enforcement notice.

### **Ground (b)**

4. Ground (b) is that the matters alleged in the Notice have not occurred. The Notice alleges the construction of a canopy across the first floor terrace.
5. Viewed from the rear, the terrace is a raised balcony structure one storey above the ground. However, that ground is a yard area that, relative to the street on Ashtead Road, appears to be at the level of a basement. The basement storey appears to be accessed via a significant number of steps down from Ashtead Road. Conversely, the balcony across which the canopy has been positioned is at a floor level accessed by just 3 steps up from the street, via an entrance that, architecturally, looks like a front door.
6. Therefore, while significantly raised from the yard, I find that the balcony is at a level that would ordinarily be described as the ground floor, relative to the front elevation on Ashtead Road. There is no canopy at first floor level and, therefore, the matters alleged in the Notice have not occurred.
7. Nevertheless, under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act), I have the power to correct any defect, error or misdescription in the Notice. The only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
8. In this case, the allegedly unauthorised canopy has been clearly shown in photographs appended to the Notice. The appellant has clearly understood what the allegation relates to as they have prepared appeals on other grounds responding to it. Therefore, no injustice would arise if I were to correct the allegation to refer to the ground floor rear terrace.
9. Thus, the appeal on ground (b) succeeds, but rather than quash the Notice, I shall correct the allegation.

### **Ground (c)**

10. Ground (c) is that the matters alleged do not constitute a breach of planning control. The onus of proof on this ground is with the appellant.
11. The appellant claims that the canopy benefits from planning permission granted by Article 3, and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). This permits the enlargement, improvement or other alteration of a dwellinghouse (the Permitted Development Rights).
12. However, the Council has set out that No 67 is subdivided into flats, while No 65 is a maisonette with a basement floor flat. The Permitted Development Rights only apply to dwellinghouses. The status of No 67 is not disputed by the appellant, and in their final comments, the appellant has suggested that the ground (c) appeal should relate only to No 65. This appears to accept that the Permitted Development Rights would not have applied to No 67.
13. Even if No 65 is a dwellinghouse, I saw at the site visit that the canopy is a single structure that covers the rear balcony areas of both Nos 65 and 67. While it might be possible to remove part of it, it is not currently two separate structures and it is the entire structure that is described in the matters alleged in the Notice. If at least part of the canopy requires planning permission and

does not have it, then the matters alleged do constitute a breach of planning control.

14. The appellant further suggests that, for the purposes of the GPDO, the development is an alteration rather than an extension. Even if I were to agree with the appellant, the development would still not be permitted by the GPDO, as the Permitted Development Rights have not been shown to apply to No 67.
15. Express planning permission is required and has not been given. Therefore, the matters alleged do constitute a breach of planning control and the ground (c) appeal should fail.

### **Ground (a)**

16. Ground (a) is that planning permission should be granted for the development constituted in the alleged breach of planning control. As corrected, this is the construction of a canopy across the ground floor rear terrace. The main issues are the effect on the character and appearance of the area, and the effect on the living conditions of neighbouring residents, with particular regard to privacy.

#### *Character and appearance*

17. The site is located within an established suburban area of regularly arranged dwellings. There are relatively unified front elevations when viewed from Ashted Road. However, the rear elevations have been heavily altered, with numerous ground floor, first floor and roof additions of varying shapes and sizes, finished in a range of materials. This has led to a somewhat haphazard appearance, with various bulky structures that draw the eye.
18. While the appeal site is at the end of the road, and so readily visible from Spring Hill and the large park on the opposite side of that road, the canopy appears as a relatively low-key, light weight structure amongst the other alterations. It has been constructed of slender timber with a polycarbonate sheet roof that might not be described as the highest quality materials, or be those typical of the external finish of the dwellings in this area, as encouraged by the Residential Extensions and Alterations Supplementary Planning Document 2009. However, in the above context, it causes no material harm to the character and appearance of the area.
19. I, therefore, find that the development causes no conflict with those aims of policy D4 of the London Plan 2021 (LP) or Policy LP1 of the Hackney Local Plan 2020 (HLP) that seek to ensure good design, and that development is of a high quality that responds to local character and distinctiveness.

#### *Living conditions*

20. The canopy covers a raised balcony that spans the rear of Nos 65 and 67. The balcony affords views out across the lower rear yards of Nos 65 and 67 and also clear views into the rear yard of No 63. Views towards the garden areas of dwellings immediately behind are less intrusive due to the presence of intervening boundaries and structures.
21. In providing shelter from the elements, the canopy enables the balcony to be used with greater regularity than if it were not there. However, the additional times would likely be those where, due to weather conditions, only low, or

occasional use of the neighbouring, uncovered, outdoor spaces occurred. It would not increase the likelihood of use at times when residents may be sitting out or otherwise using those neighbouring external areas.

22. Screens have been erected at the end of the balcony on both sides of the boundary between Nos 65 and 63 that prevent views onto the neighbouring balcony, or back into the private indoor spaces of No 63. Thus, any increased use of the balcony does not harm the privacy of neighbouring internal spaces and each property owner appears to have control over those screening arrangements.
23. I, therefore, find that the canopy causes no harmful loss of privacy to the occupiers of neighbouring dwellings and no conflict with those aims of LP Policy, D3 or HLP Policy LP2 that seek to ensure development does not adversely affect living conditions and delivers appropriate privacy to residents.
24. The reasons for issuing the Notice also allege a conflict with LP Policy D1, but this appears to be more concerned with plan making than decision taking, so I find no conflict with it.

*Conclusion on ground (a)*

25. With regard to the above, I find that the matters alleged cause no conflict with the aims of the development plan. No other material considerations have been presented that indicate that the appeal should be determined otherwise than in accordance with it.
26. Therefore, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the development as described in the notice, as corrected.
27. Accordingly, the appeal on ground (g) does not fall to be considered.

**Formal Decision**

28. It is directed that the enforcement notice is corrected by:

In Section 3 'The Breach of Planning Control Alleged' the deletion of the words "first floor" and their replacement with the words "ground floor".

29. Subject to the correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the construction of a canopy across the ground floor rear terrace at 65 and 67 Ashted Road, Hackney, London E5 9BJ as shown hatched on the plan attached to the Notice.

*M Bale*

INSPECTOR